

MOSER LAW FIRM, PC



Steven J. Moser

Tel: 631-824-0200

steven.moser@moserlawfirm.com

May 24, 2022

VIA ECF

Hon. Anne Y Shields, USMJ  
United States District Court, EDNY  
100 Federal Plaza  
Central Islip, NY 11717

Re: *Barahona et. al. v. Paradise Tree Service & Landscape, Corp. et. al.*  
Case No. 21-cv-05400 (GRB)(AYS)

Dear Judge Shields:

I write to correct representations made to the Court by Mr. Ingoglia, the attorney for Defendants. *See* ECF No. 14.

Mr. Ingoglia informs the Court that he agreed to produce a supplemental declaration, but that once he saw the proposed affidavit, he could not agree to do so. This is incorrect. Mr. Ingoglia *agreed to furnish a supplemental affidavit after* receiving the proposed affidavit.

Specifically, on April 26, 2022 I emailed Mr. Ingoglia the proposed supplemental affidavit. *See* Exhibit 1. Two days later, on April 28, 2022, he stated: ***“We will be providing a supplemental affidavit.”*** *See* Exhibit 2. However, the affidavit was never furnished as promised. Later, during a meet and confer, Mr. Ingoglia stated that he could *never* permit his client to state whether payroll documents exist, because to do so would be “malpractice.” According to Mr. Ingoglia, payroll records might appear or be foyat any moment.

“[E]ven where a party objects to a document request, it must nevertheless state whether any documents responsive to the request exist.” *Mohegan Lake Motors v. Thomas Maoli & Celebrity Auto of Mohegan Lake*, No. 16CV6717 (NSR)(LMS), 2018 U.S. Dist. LEXIS 239448, at \*3 (S.D.N.Y. Apr. 6, 2018).

In short, an employer must state whether or not it has payroll records. Plaintiffs ask no more than what the Federal Rules of Civil Procedure require, and what the Defendant has agreed to do. Plaintiffs do not want to be sandbagged by payroll records which mysteriously appear shortly before mediation or trial.

Respectfully submitted,

*Steven J. Moser*

Steven J. Moser